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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,273	07/19/2006	Boris Emmanuel Rachmund De Ruyter	US040041US2	8746

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EXAMINER

WONG, ALBERT KANG

ART UNIT	PAPER NUMBER
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2612

MAIL DATE	DELIVERY MODE
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08/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,273	Applicant(s) DE RUYTER ET AL.	
	Examiner ALBERT K. WONG	Art Unit 2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This Office action is in response to the application filed July 19, 2006 which is a 371 of PCT/IB05/501182 filed January 17, 2005 which claims the benefit of provisional application 60/537,800, filed January 20, 2004. Claims 1-21 are pending.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (7,233,316).

Regarding claim 1, Figure 3 and col. 4-5 teaches a remote controller that detects motion of the apparatus and interprets the motion to identify a command and executes the command. Smith does not explicitly teach a memory and a processor. It is conventional for a remote control to include a processor and memory. It would have been obvious to use conventional means for their known functionality.

Regarding claim 2, the remote control in Smith sends a command to control an appliance. This is considered the claimed second command.

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Regarding claims 3-5, Smith discloses a plurality of different detected motions that corresponds with commands. The claimed particular motion is considered an obvious design choice since any motion may correspond with a command and the particular motion is not critical.

Regarding claim 6-8, it would have been obvious to create and/or add new motion models by detecting the motion of the device since the detected motion is compared with a recorded motion.

Regarding claim 9, Smith teaches a gyroscope which is a three dimensional motion sensor.

Regarding claim 10, Figure 3 shows various motion models.

Regarding claim 11, it would have been obvious to compare measured motion to a motion model to determine the particular input commands since a comparison is necessary to determine the particular command entered.

Regarding claims 12-20, these claims are the method equivalent of the apparatus claims. Since the apparatus has been shown to be obvious, the method of using the apparatus in its intended manner would also have been obvious.

Regarding claim 21, this claim recites the software for controlling the processor embodied on a readable medium. Since the processor with the associated function has been shown to be obvious, the software for performing the function would also have been obvious.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The listed prior art of record are further examples of the claimed invention and

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obvious variations. Applicant should considered all references and not just the applied reference prior to responding to the Office action. Kiraly teaches aspects of recording new motion models.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALBERT K. WONG whose telephone number is (571)272-3057.

The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian A. Zimmerman can be reached on 571-272-3059. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Albert K Wong/
Primary Examiner, Art Unit 2612

August 6, 2009